ment is void, since it is merely illusory. *Barret* v. *Barret* (Ky.), 179 S. W. 396.

The rule appeared to be at one time established in England that where a non-exclusive power was given to appoint among a class, whereby no right existed to exclude any member thereof, then in equity at least, there must be a substantial appointment to each member, or the appointment will be regarded as illusory and hence void. *Wall* v. *Thurbane,* 1 Vern. 414; *Spencer* v. *Spencer,* 5 Ves. 362; *Kemp* v. *Kemp,* 5 Ves. 849. See 2 SUGDEN, POWERS, 534 *et seq.* But a substantial part only need be given to each member of the class, and equality is not necessary. *Butcher* v. *Butcher,* 1 Ves. & B. 79, 5 Gray's Cas. 371. This doctrine has now been abrogated in England, by the statute of 37 and 38 Vict. c. 37, § 1. See MINOR, REAL PROP., § 1320; TIFFANY, REAL PROP., § 288.

In this country, the authorities are in a very unsatisfactory state. By some strong *dicta,* the former English rule that where the donee of a non-exclusive power fails to give to each member of the class a substantial share, the appointment is regarded as illusory and void, would seem to be regarded with favor by certain courts. See *Clay* v. *Smallwood,* 100 Ky. 212, 38 S. W. 7; *Knight* v. *Yarbrough,* 21 Va. 27; *Thrasher* v. *Ballard,* 35 W. Va. 524, 14 S. E. 232. See TIFFANY, REAL PROP., § 288; 17 HARV. L. REV. 498.

In those cases, however, in which the precise point has arisen, it has been held that the doctrine of illusory appointments will not be applied. *Hawthorn* v. *Ulrich,* 207 Ill. 430, 69 N. E. 885; *Graef* v. *De Turk,* 44 Pa. St. 527; *Cowles* v. *Brown,* 8 Va. 477. See also, *Lines* v. *Darden,* 5 Fla. 51, 81; *Fronty* v. *Fronty,* 1 Bailey Eq. (S. C.) 509, 522. And this would seem to be the better rule. Thus, where a power of appointment among a class is given by will, a court of equity should not control the appointments actually made, where the donee of the power has acted in good faith, even though the shares given to the various members of the class may appear to the average mind to be unequal and the discrimination unwise. *Portsmouth* v. *Shackford,* 46 N. H. 423; *Graef* v. *DeTurk, supra.* See also, *Lines* v. *Darden, supra.* The donor of the power has relied upon the discretion of the donee, and for a court to prohibit the exercise of this discretion would be to disregard the express command of the donor. See *Bax* v. *Whitbread,* 16 Ves. 15; *Fronty* v. *Fronty, supra.* Of course, where the exercise of the power by the donee has been actuated by fraudulent motives, then a court of equity should annul the appointments made thereunder, since no one may profit by his own wrong. *Stocker* v. *Foster,* 178 Mass. 591, 60 N. E. 407; *Degman* v. *Degman,* 98 Ky. 717, 34 S. W. 523. And where the exercise of the power is declared void, or the power has not been exercised, the estate is distributed equally, on the ground that equality is equity. *Wetmore* v. *Henry,* 259 Ill. 80, 102 N. E. 189; *Degman* v. *Degman, supra.*

TRIALS—CHANCE VERDICT—GROUNDS FOR NEW TRIAL.—A jury, being unable to reach a verdict, agreed that the case should be decided by tossing up a coin. This method was pursued and a verdict rendered in accordance with the result, whereupon a motion for a new trial was made.

Held, a new trial is granted. *Beakley* v. *Optimist Printing Co.* (Ida.), 152 Pac. 212.

A chance verdict results when the jury resorts to some other method of determination than a consideration of the merits of the case alone. *Goodman* v. *Cody,* 1 Wash. 329, 34 Am. Rep. 808. Thus a verdict reached by placing a coin and guessing heads or tails is a chance verdict; and, as such, is ground for a new trial. *Donner* v. *Palmer,* 23 Cal. 40. Likewise where ballots were cast, and a verdict rendered according as the plaintiff or defendant received a majority. *Mitchell* v. *Ehle,* 10 Wend. (N. Y.) 595; *Houk* v. *Allen,* 126 Ind. 568, 25 N. E. 897, 11 L. R. A. 706. So, also, it is held that a quotient verdict is within the category of chance verdicts and affords ground for a new trial, where there is a precedent agreement that the result shall be binding. *Goodman* v. *Cody, supra; Pawnee Ditch & Improvement Co.* v. *Adams,* 1 Colo. App. 250, 28 Pac. 662; *International Agricultural Corp.* v. *Abercrombie,* 184 Ala. 244, 63 South. 549, 49 L. R. A. (N. S.) 415. But the cases hold with practical unanimity that a verdict reached by the quotient method is unobjectionable in the absence of an agreement to abide by the result. *McDonnell* v. *Pescadero & San Mateo Stage Co.,* 120 Cal. 476, 52 Pac. 725; *Rambo* v. *Empire District Electric Co.,* 90 Kan. 390, 133 Pac. 553; *Pushcart* v. *N. Y. Shipbuilding Co.,* 85 N. J. L. 525, 89 Atl. 980. And it has been so held even in criminal cases. *Thompson* v. *Commonwealth,* 8 Gratt. (Va.) 637; *Cochlin* v. *People,* 93 Ill. 410.

WILLS—CONSTRUCTION—DEED OR WILL.—An instrument in form a deed, which was to take effect only upon the death of the maker, reserved in him during his life a power of disposal over the personalty and a life-estate to himself and wife in the realty; and was delivered to the grantee some years after its execution. On the death of the maker and his wife, a suit in equity was brought by the heirs-at-law against the grantee to settle title to the property. *Held,* the instrument is testamentary in character and not a deed. *Seay* v. *Huggins* (Ala.), 70 South. 113.

In ascertaining the legal effect of written instruments the intention of the maker, as gathered from the four corners of the instrument, is the pole star of construction. *Sims* v. *Brown,* 252 Mo. 58, 158 S. W. 624. If it appears doubtful from the face of the instrument, however, whether the person executing it intended it to operate as a deed or will, the attending facts and circumstances may be put in proof as aids in discovering the intention. *Phifer* v. *Mullis,* 167 N. C. 405, 83 S. E. 582. The instructions given to the draughtsman as to the nature of the paper he was asked to draw may be thus shown; also whether there was an entire or a partial disposition of the property of the maker; also whether there was a delivery of the instrument; also statements of the deceased made at the time of executing the instrument; also the inclusion of after acquired property within the operation of the instrument and any other circumstance which furthers the determination of the maker's intention. *Sharp* v. *Hall,* 86 Ala. 110, 5 South. 497, 11 Am. St. Rep. 28 and note; *Crocker* v. *Smith,* 94 Ala. 295, 10 South. 258, 16 L. R. A. 576; *Lauck* v. *Logan,* 45 W. Va. 251, 31 S. E. 986. Where the legal effect of